

REMARKS

Claims 16-25 were pending, examined and rejected in the April 28, 2004 Office Action. Claims 16 and 21 have been amended herein, and no claims have been added or deleted. Thus, claims 16-25 are presently pending in this application. Applicant requests reconsideration of this application.

CLAIM REJECTIONS – 35 U.S.C. §103

CLAIMS 16, 20, 24 and 25

Claims 16, 20, 24 and 25 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the Siemens Servo Ventilator 300 (as disclosed in the non-patent literature, Operating Manual for Siemens Servo Ventilator 300) in view of Baum (U.S. Patent No. 4,637,386). Applicant respectfully disagrees with the Examiner's assertion that the applied non-patent literature discloses an inspiratory branch including an inspiration valve. The referenced text (page 17, number 3) merely discloses that the flow of gas is regulated by the "gas modules." There is no mention of a valve. Moreover, there is no teaching that the gas is supplied "at an adjustable pressure," as claimed by Applicant. Indeed, the non-patent literature teaches away from such pressure control of the inlet gas by stating that the pressure of the gas in the patient system is regulated by the expiratory valve (page 17, number 11).

As the Examiner correctly states, the Operator's Manual for the Siemens Servo Ventilator 300 does not teach toggling an inspiration valve (which is not taught at all) and an expiration valve during patient breathing. Although the Baum '386 patent discloses an apparatus for simultaneously opening and closing an inspiration valve and an expiration valve, such a mechanism cannot be used to modify the Siemens Servo Ventilator 300 to achieve Applicant's claimed invention. For example, closing the expiration valve in the

Siemens Servo Ventilator 300 would leave no mechanism for adjusting the pressure in the inspiratory branch, as claimed by Applicant. In addition, Applicant submits that the convoluted valve arrangement shown in FIG. 2 of the Baum '386 patent could not be successfully integrated into the Siemens Servo Ventilator 300 without inhibiting the various functions of the ventilator. Such a modification is not suggested or taught by the cited references. Likewise, there is no basis for such a modification that can be reasoned from the knowledge generally available to those of ordinary skill in the art.

Applicant submits that the combination of the teachings of the non-patent literature and the Baum '386 patent as applied by the Examiner at most provides the combination of functions achieved by Applicant's claimed invention, but does not render obvious the claimed structure. Moreover, even if the structure of the Siemens Servo Ventilator 300 and the Baum '386 ventilation system could be combined into a functional structure, there is no teaching or suggestion to make such a combination. Further, there is no teaching in the references or explanation from the Examiner as to how to combine the structure of the references to provide an apparatus that provides each of the structural features of Applicant's claimed invention. Similarly, the Examiner has not detailed how such a motivation would come from the knowledge of those of ordinary skill in the art. Thus, Applicant respectfully submits that the Examiner's rejection of claims 16, 20, 24 and 25 under § 103 is improper and should be withdrawn.

CLAIMS 17 and 18

Claims 17 and 18 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the Siemens Servo Ventilator 300 in view of Baum '386 and in further view of Miles (U.S. Patent No. 5,353,788). Claims 17 and 18 depend from Applicant's independent claim 16. As discussed above regarding claim 16, the Examiner's modification of the Siemens Servo Ventilator 300 device with the valve configuration of Baum '386 is improper and does not render Applicant's claim 16 obvious. Miles '788 does nothing to cure the deficiencies of the Examiner's rejection of claim 16. Even if

modifying the Siemens Servo Ventilator 300 device with the disclosures of Baum `386 and Miles `788 did teach the structure of Applicant's claimed invention, which it would not, there is no teaching or suggestion to combine the three references. Thus, Applicant respectfully submits that the Examiner's rejection of claims 17 and 18 under § 103 is improper and should be withdrawn.

CLAIM 19

Dependent claim 19 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the Siemens Servo Ventilator 300 in view of Baum `386 and in further view of Adahan (U.S. 4,941,469). Claim 19 depends from Applicant's independent claim 16. As discussed above regarding independent claim 16, the Examiner's modification of the Siemens Servo Ventilator 300 with the valve configuration of Baum `386 is improper and does not render Applicant's claim 16 obvious. Adahan `469 does nothing to cure the deficiencies of the Examiner's rejection of claim 16. Even if modifying the Siemens Servo Ventilator 300 device with the disclosures of Baum `386 and Adahan `469 did teach Applicant's claimed invention, which it would not, there is no teaching or even the faintest suggestion to combine the three references. Thus, Applicant respectfully submits that the Examiner's rejection of claim 19 under § 103 is improper and should be withdrawn.

CLAIMS 21 and 23

Claims 21 and 23 stand rejected under 35 U.S.C. 103(a) as being unpatentable over the Siemens Servo Ventilator 300 in view of Jacq et al. (U.S. Patent No. 4,336,590) and in further view of Axe et al. (U.S. Patent No. 6,085,747). Applicant has currently amended independent claim 21 (and, thus, dependent claim 23) to include the feature that the valve controller is configured to close the inspiration valve during expiration and to close the expiration valve during inspiration. Neither the non-patent literature nor the Jacq `590 or Axe `747 patents disclose such a feature. As discussed above regarding claim 16, adding the Baum `386 patent to the Examiner's combination of references

would be improper, and would not yield Applicant's claimed invention. Accordingly, Applicant submits that the Examiner's rejection of claims 21 and 23 under § 103 should be withdrawn.

CLAIM 22

Claim 22 stands rejected under 35 U.S.C. 103(a) as being unpatentable over the Siemens Servo Ventilator 300 in view of Jacq `590 and Axe `747 and in further view of Adahan `469. Claim 22 depends from independent claim 2, which has been amended as discussed above. Accordingly, Applicant submits that the Examiner's rejection of claim 22 under § 103 should be withdrawn.

CONCLUSION

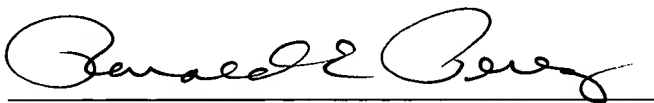
In view of the foregoing, Applicant respectfully submits that claims 16-25 are in condition for allowance, and that the application should be passed to issue. The Examiner is encouraged to contact the undersigned should there be any questions or resolvable matters regarding this application

Respectfully submitted,

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